Supreme Court, U.S.
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No. 02-448

In The
Supreme Court of the United States

JEREMY DOUGLAS HILL, LUCAS GALLAGHER, AND GEORGE LARRY COURS, AS NEXT FRIEND OF COURTNEY COURS, A MINOR,

Petitioners,

v.

CITY OF FREEPORT, TEXAS AND BRAZOSPORT INDEPENDENT SCHOOL DISTRICT,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT, CITY OF FREEPORT, TEXAS, BRIEF IN OPPOSITION

WILLIAM S. HELFAND*
KEVIN D. JEWELL
BARBARA E. ROBERTS
MAGENHEIM, BATEMAN & HELFAND, P.L.L.C.
3600 One Houston Center
1221 McKinney
Houston, Texas 77010
Tel: (713) 609-7790
Fax: (713) 609-7777

*Counsel of Record

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COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether Respondents, a municipality acting through its police force and a public school district, violated Petitioners' Fourth Amendment Rights.

LIST OF PARTIES

1. Jeremy Douglas Hill, Petitioner
2. Lucas Gallagher, Petitioner
3. George Larry Cours, as next friend of Courtney Cours, Petitioner
4. City of Freeport, Texas, Respondent
5. Brazosport Independent School District, Respondent

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STATUTES AND RULES

Fed. R. Civ. P. Rule 12(b)(6) 1

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STATEMENT OF THE CASE

Respondent, City of Freeport, Texas, directs the Court to the facts as outlined in the Opinion of the court of appeals. (Pet.App.B2-B3).[1]

SUMMARY OF ARGUMENT

Petitioners have presented no issue which merits this Court's attention. They have mischaracterized the question presented. Further, they incorrectly argue that the "special needs exception," in the school setting, is a developing area of the law and thus, this Court should therefore grant certiorari to determine whether the special needs exception is applicable under the specific facts of this case. Petitioners also argue that the Court of Appeals misapplied the law, which, most assuredly, is not a basis for granting a petition for writ of certiorari. SUP. CT. R. 10.

Petitioners' entire argument presumes that the "special needs exception" is not applicable under these specific facts involving high school students, and therefore, the Court of Appeals' misapplied *Vernonia School Dist. v. Acton*, 515 U.S. 646, 115 S.Ct. 2386 (1995). However, both the District Court and the Court of Appeals determined that Petitioners failed to state a claim for a constitutional violation by applying well-established law requiring the balancing of the Petitioners' constitutional rights and the

[1] In light of the 12(b)(6) standard of review, the facts described in the Court of Appeals' Opinion are simply those alleged by the Petitioners. The City of Freeport strongly disputes Petitioners' version of the facts.

governmental interest in preventing the possibility of violent conduct on a high school campus.

Equally important, even after finding that Petitioners had failed to state a constitutional claim, the District Court further analyzed Petitioners' Complaint and correctly determined that the Complaint did not "allege, much less factually describe, a policy or custom which led to a Constitutional deprivation." (Pet.App.D10). Absent such allegation, Petitioners' Complaint fails to state a claim. *See Spiller v. City of Texas City*, 130 F.3d 162 (5th Cir. 1997).

Additionally, Petitioners unsuccessfully attempt to fabricate a conflict between the Court of Appeals' decision and the Supreme Court's decision in *Board of Educ. of Indep. School District No. 92 of Pottawatomie County v. Earls*, ___ U.S. ___, 122 S.Ct. 2559 (2002). In reality, there is no conflict, and the Court of Appeals Opinion does not conflict with any decision from this Court or any other Circuit. Accordingly, Rule 10 jurisdiction is not invoked and this Court should deny the writ.

Finally, Petitioners argue that this case presents an important constitutional issue pertaining to the "special needs exception" as it applies to local law enforcement officers who act in conjunction with school officials. (Pet. for Cert. 14-16). However, the question of whether the "special needs" analysis applies to local law enforcement officers was not an issue in this case because, regardless of who the actors were, the courts below applied well-established law and determined that Petitioners failed to state a constitutional claim and further failed to state a claim for municipal liability. Neither the facts of this case nor the Court of Appeals' analysis present an important

constitutional issue. Accordingly, this Court should deny Petitioners' Writ of Certiorari.

ARGUMENT

REASONS FOR DENYING THE WRIT

The sole question presented by the Petitioners is whether the "special needs exception" to the probable cause and warrant requirements of the Fourth Amendment are applicable to the specific facts in this case. Petitioners argue that the Court of Appeals misapplied the Supreme Court's Holding in *Vernonia* and that the Court of Appeals reached the wrong decision in light of this Court's recent decision in *Earls*. Notably, this Court's holding in *Earls* does not repudiate its previous holding in *Vernonia*. More importantly, the Court of Appeals decision does not conflict with this Court's decisions in either *Vernonia* or *Earls*, and in fact, both the District Court and the Court of Appeals reached their decisions by balancing the Petitioners' constitutional rights against the school's governmental interest in preventing violence on campus. Thus, the Fifth Circuit's ruling was proper in all respects and Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

I. This case presents no important question of federal law to be "settled," thus, Rule 10 jurisdiction is not invoked.

Petitioners urge this case is appropriate for review by a grant of certiorari, vacation and remand (GVR) in light of the Court's decision in *Earls* and because this is a

"developing area of the law that deserves closer scrutiny." (Pet. for Cert. 13).

Importantly, Petitioners' challenge underscores the reasons for Supreme Court Rule 10, this Court's procedural rule, which identifies the character of reasons considered in the grant or denial of a petition for certiorari. Rule 10 states, in pertinent part:

> A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of reasons the Court considers:
>
> (c) . . . a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

SUP. CT. R. 10.

Most assuredly, Petitioners do not meet this criteria. In reality, this case presents nothing more than a legal determination of the sufficiency of pleadings to state a claim. For the reasons that follow, this Court's jurisdiction is not invoked under Rule 10. Therefore, the Court should deny the petition.

A. Petitioners' mischaracterization of the question presented attempts to evade the determinative inquiry.

Initially, the Court should note that Petitioners' phrasing of their "question presented" is suspect. They characterize their "question presented" as "whether the 'special needs exception' to the probable cause and warrant requirements of the Fourth Amendment authorized Respondents, a municipality acting through its police force and a public school district, to arrest Petitioner public school children, subject them to physical searches, handcuff and remove them from campus and hold them in custody solely because they were believed to associate with a student who was suspected of writing a threatening note?" (Pet. for Cert. i). This question, as stated by Petitioners, would be answered in the affirmative by the Fifth Circuit's Opinion here. (*See* Pet.App.B1).

However, Petitioners imply by their question that both the Court of Appeals and the District Court found that specifically because of the "special needs exception," the actions of the local law enforcement officers were justified. Petitioners' implication that the Court of Appeals, as well as the District Court, would not have reached their decision absent the "special needs exception" analysis is simply misleading. Contrary to Petitioners' assertions, both the Court of Appeals and the District Court analyzed Petitioners' allegations by balancing constitutional rights and the governmental interest at issue. Although both courts noted the "special needs exception" as it applies to schools, neither court concluded that the challenged law enforcement action was justified specifically because of the "special needs exception."

B. No conflict exists between the Fifth Circuit's Opinion and any Opinion of this Court, or any other Circuit.

The Fifth Circuit correctly decided the true issue – whether Petitioners state a claim that Respondents violated the Petitioners' Fourth Amendment Rights – and its Opinion does not merit this Court's attention.

In determining whether Petitioners' Fourth Amendment Rights had been violated, the Court of Appeals correctly analyzed the Petitioners' allegations against the school's interest to have a violence-free campus. In examining the facts, the Court of Appeals correctly determined that:

> The reasonableness of search and seizure must be determined by balancing the interests of the government against the invasiveness of the search or seizure. Given the totality of the circumstances surrounding the detention of [Petitioners], we cannot say with the required certainty that the actions of the school officials and police herein were unreasonable.

(Pet.Cert.App.B5). This is exactly the balancing test this Court set forth in *Vernonia* and restated in *Earls*. Indeed, although this Court's decision in *Earls* may have provided greater guidance to the Court of Appeals, as to the application of the "special needs exception" in school settings, it most assuredly would not have charged the Court of Appeals with conducting its analysis under different principles of law. This Court's decision in *Earls* simply does not conflict with its decision in *Vernonia* and thus review of the Court of Appeals' decision in light of *Earls* is simply not warranted.

In light of these facts, the Court of Appeals made a correct decision regarding a fact-specific inquiry. The Petitioners have presented no issue which would warrant this Court's review of this case. Therefore, Rule 10 jurisdiction is not invoked and this Court should deny the petition.

II. This Court's decision in *Earls* did not repudiate the "special needs" analysis set forth in *Vernonia* and the Court of Appeals did not misapply the Supreme Court's Holding in *Vernonia*.

Petitioners argue that the Court of Appeals' decision is a "gross misapplication of the Supreme Court's holding in *Vernonia v. Acton*, and should be summarily reversed for review in light of the Court's recent decision in *Pottawatomie County v. Earls*." (Pet. for Cert. 8). However, even if the Court of Appeals misapplied the law set forth in *Vernonia* – and it did not – such misapplication does not justify granting the writ. "A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." SUP. CT. R. 10.

More importantly, Petitioners appear to be under the misguided belief that the Court of Appeals' decision "cannot withstand scrutiny under the standard for special needs searches" applied in the *Earls* decision. (Pet. for Cert. 12).

The incident giving rise to this lawsuit occurred "[t]hree days after the tragic and shocking 1999 shooting incident at Columbine High School" and involved a threatening letter found in the Brazosport High School computer room. (Pet.App.B2). "School authorities suspected a

particular student, who spent his idle time with [Petitioners]. . . . They ate lunch together and traveled in the same social circle." (Pet.App.B2). Officers of the Freeport Police Department confronted the students, "placed them in a police car and took them to the Freeport municipal building." (Pet.App.B2-B3). According to the Petitioners, under these facts, the Court of Appeals misapplied this Court's holding in *Vernonia* and did not have the benefit of this Court's decision in *Earls*, which this Court rendered after the Court of Appeals determined the case at bar. Clearly, Petitioners' argument that the Court of Appeals did not have the benefit of this Court's decision in *Earls* is a red herring. In *Earls*, this Court did not deviate from its holding in *Vernonia*, and, in fact, reiterated that:

> In certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion. Therefore, in the context of safety and administrative regulations, a search unsupported by probable cause may be reasonable when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.

Earls, 122 S.Ct. at 2564 (internal quotations and citations omitted). Petitioners offer no argument whatsoever that this Court's decision in *Earls* is somehow contrary to this Court's decision in *Vernonia*. Although Petitioners recognize that both *Vernonia* and *Earls* require that "the special needs exception to the probable cause requirement must be based upon a fact-specific balancing of the intrusion on the children's Fourth Amendment rights against the

promotion of legitimate government interests" they argue that somehow the Court of Appeals application of the balancing analysis was "completely inappropriate and is not supported by *Vernonia* or *Earls*." (Pet. for Cert. 11). Petitioners do not seriously contend that the Court of Appeals misapplied the law in light of *Earls*, instead they simply argue that the Court of Appeals reached an incorrect decision when balancing the Petitioners' constitutional rights against the governmental interest.

Contrary to Petitioners' assertions, the crux of the case concerns whether "special needs" existed in the school setting, which justified the actions of the police and school officials in confronting these students, taking them to the City's municipal building, calling their parents, and lecturing the students and their parents. Notably, all of the students were released to their parents and none were arrested.

The Fifth Circuit determined, in the context of the Fourth Amendment, that an "otherwise unconstitutional search may be constitutional; however, when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." (Pet.App.B4, internal quotation omitted). This is the real issue presented by Petitioners. Although the Court of Appeals mentioned *Vernonia* for the proposition that "students in the school environment have a lesser expectation of privacy than members of the population generally," the Court did not base its decision upon the "special needs exception" but instead, correctly decided the issue, after undertaking a reasonableness assessment by balancing the interest of the government against the invasiveness of the alleged search or seizure. (Pet.App.B5).

III. This case does not present an important constitutional issue regarding the standards by which law enforcement officers can search and seize school children and the applicability of the "special needs exception" as to those officers.

According to Petitioners, if the published District Court Order and the Court of Appeals' unpublished Opinion are allowed to stand, this case will become "widely relied upon for the proposition that law enforcement officials can enter school grounds and search and seize students without probable cause, because the police are either bumbling hysterics or simply grossly insensitive, as long as the students selected for such abusive behavior had some social connection to a student who may or may not have broken a school rule." (Pet. for Cert. 16). Importantly, neither the District Court's Order granting respondents' motions to dismiss, nor the Court of Appeals' Opinion affirming the dismissal because of petitioners' failure to state a constitutional violation, stand for the proposition cited by Petitioners. A plain reading of the District Court's Order and the Court of Appeals' Opinion show that the courts below clearly balanced the Petitioners' interest in being free from seizure against the governmental interest in "acting forcefully to stem even the possibility of violent conduct." (Pet.App.D7-9). Importantly, after balancing these two interests, the District Court concluded that the personal invasion was reasonable under all the circumstances. (Pet.App.D9).

Petitioners appear to argue that the "special needs exception" does not apply if local law enforcement officers are involved with assisting school officials in curtailing the possibility of violent conduct. In other words, Petitioners

attempt to segregate the actions taken by the police from those taken by the school officials in order to remove the actions from a "special needs" analysis. The District Court declined Petitioners' invitation "to parse through the actors in such a fashion" because "[t]o the extent that a government interest exists and the actions are reasonable, it is of no import what state actor took the actions." (Pet.App.D7,n7).

The Court of Appeals agreed with the District Court's reasoning "that the mere detention of the students for several hours was not sufficient to establish a Fourth Amendment violation in light of the school's custodial and tutelary responsibilities. . . . Given the totality of the circumstances surrounding the detention of [Petitioners], we cannot say with the required certainty that the actions of the school officials and police herein were unreasonable." (Pet.App.B5). Thus, neither court reached the question of whether the "special needs exception" applies to local law enforcement officers. The facts of this case simply do not lend themselves to this issue, nor do the facts present an important constitutional issue as to whether the conduct of police officers can be analyzed under the special needs exception.

CONCLUSION

The Court of Appeals, as well as the District Court, balanced the facts, as alleged by Petitioners, against the school district's interest in maintaining a violence-free campus, and correctly determined that Petitioners had failed to state a claim and accordingly dismissed Petitioners' Complaint.

The Court of Appeals did not misapply this Court's decision in *Vernonia* or *Earls*, nor does the Court of Appeals' Opinion conflict with either of these cases.

Additionally, the question of whether the "special needs" analysis applies to local law enforcement officers was not the basis for the dismissal of Petitioners' Complaint, and thus, this case does not present an important constitutional issue.

For all these reasons, this Honorable Court should deny the petition for writ of certiorari.

Respectfully submitted,

WILLIAM S. HELFAND*
KEVIN D. JEWELL
BARBARA E. ROBERTS
MAGENHEIM, BATEMAN & HELFAND, P.L.L.C.
3600 One Houston Center
1221 McKinney
Houston, Texas 77010
Tel: (713) 609-7790
Fax: (713) 609-7777
**Counsel of Record*

Attorneys for Respondent, City of Freeport, Texas